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In the Supreme Court of the United States

OCTOBER TERM, 1958

JAMES J. [redacted]LAUGHLIN, PETITIONER

v.

RUSSELL C. HARRINGTON, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINION BELOW

The District Court wrote no opinion. The opinion of the Court of Appeals (Pet. 1a–2a) is reported at 256 F. 2d 893.

JURISDICTION

The judgment of the Court of Appeals was entered on May 29, 1958, and a petition for rehearing was denied on August 25, 1958. The Chief Justice extended the time within which to file a petition for a writ of certiorari to December 10, 1958, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED

1. Whether, when a taxpayer sues the Commissioner of Internal Revenue for specific performance of alleged contracts calling for delivery to the taxpayer of Government documents in the Commissioner's custody, the action is in reality a suit against the United States requiring its consent.

2. Whether, in any event, taxpayer's alleged contracts with the Commissioner of Internal Revenue were unenforceable because the subordinate official who signed the Commissioner's name to the alleged contracts had neither power nor purported authorization to enter into contracts in order to obtain waivers from the taxpayer extending the time for assessing taxpayer's taxes.

STATEMENT

The taxpayer brought suit in the District Court seeking specific performance of alleged contracts requiring the Commissioner of Internal Revenue to make available to the taxpayer all documentary material in the Commissioner's custody pertaining to taxpayer's income taxes for the years 1950 and 1952. The District Court dismissed the complaint on the ground that the alleged contracts were void because the Internal Revenue Service official who signed them had neither power nor purported authorization to enter into such contracts. (R. 15–16.) [1] The Court of Appeals affirmed on the ground that taxpayer's suit for specific performance was a suit against the United States and could not be maintained because the United

[1] Record references are to the Appendix to taxpayer's brief in the Court of Appeals.

States has not consented to such a suit. (Pet. 1a–2a.)

The testimony in the District Court revealed the following undisputed facts:

On March 9, 1956, an Internal Revenue Agent named Schleuter called on the taxpayer to ask if he would sign Treasury Forms 872 extending the time for assessment of his income taxes for the years 1950 and 1952 to June 30, 1957. (R. 12, 18–19, 50–51.) On the back of these forms, taxpayer added typewritten matter stating, in substance, that the Internal Revenue Service had lost or concealed books and records which taxpayer had turned over to a revenue agent who had a history of insanity; that, as a result, it was impossible for taxpayer to defend any proposed assessment for the years 1950 and 1952; and that it was understood and agreed between taxpayer and the Internal Revenue Service that, in consideration of taxpayer's signature on the Forms 872 extending the statute of limitations, the Service would, within five days, make available to taxpayer for inspection and copying all statements or other documentary evidence in the possession of the Service relating to any proposed assessment which might be made against taxpayer for the years 1950 or 1952. At the bottom of this typewritten matter were spaces for the signatures of the taxpayer and the Commissioner of Internal Revenue. (R. 6–7, 9–10, 12–13.) Taxpayer signed the forms under the typewritten matter, and the forms were subsequently delivered in the ordinary course of business to Mr. Eugene Woodside, Assistant Chief of the Audit Division in the Office of the Baltimore District Director. (R. 13.)

Woodside signed the Commissioner's name on the back of the forms underneath the typewritten material, and added his own initials and the date. (R. 7, 10, 14.) At the time, Woodside was authorized to sign the Commissioner's name to consents extending the statute of limitations for assessment and collection of taxes (R. 56–59), but the District Court found that none of his superiors had told him that he was authorized to sign the Commissioner's name to the purported contracts appearing on the back of the Forms 872 (R. 15).

In October 1956, after taxpayer had made several requests for delivery of the material designated in the purported contracts (R. 26, 31–36), the Baltimore District Director wrote a letter to taxpayer stating that the material could not be made available to the taxpayer. After indicating that Mr. Woodside had no authority to sign the purported contracts on the back of the Forms 72, the letter stated that: "These waivers are being considered by us to be null and void. We will rely upon other appropriate provisions of the Internal Revenue Code to sustain the timeliness of any assessments which may be asserted with respect to the taxable years involved." (R. 14, 36–37.)

In November 1956, a notice of deficiency was sent to the taxpayer (R. 14, 27), and proceedings are now pending in the Tax Court with respect to taxpayer's taxes for the years 1950 and 1952 (Pet. 2a).

ARGUMENT

The decision below is correct, there is no conflict, and further review is not warranted.

1. Taxpayer brought this suit to compel a Government officer to deliver Government documents to him, pursuant to the terms of two alleged contracts. The Court of Appeals was clearly correct in treating this as a suit against the United States, and in dismissing for lack of jurisdiction because the United States has not consented to such a suit. *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682.

Taxpayer contends that under his alleged contracts with the Commissioner of Internal Revenue he is entitled to obtain "all statements" and "all other documentary evidence" in the possession of the Internal Revenue Service upon which certain tax assessments were made or contemplated (R. 4–10). These documents undeniably belong to the United States, not to the officials who have custody of them. Although the former Commissioner[2] is the nominal defendant here, the relief taxpayer seeks is relief against the United States. In the absence of consent by the sovereign, such a suit cannot be maintained. *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682, 687–688, 691, fn. 11, 703–704. Taxpayer's suggestion (Pet. 10) that this is a suit against a Government official in his individual capacity is untenable. Taxpayer is not suing the Commissioner for damages, but is seeking specific performance of alleged contracts to deliver documents belonging to the sovereign.

2. Even if jurisdiction to entertain this suit existed, taxpayer would not be entitled to relief because the Commissioner has no authority to enter into a contract

[2] Russell C. Harrington resigned from office on September 30, 1958.

in order to obtain a waiver from a taxpayer extending the time for assessment of the taxpayer's taxes. *Florsheim Bros. Co.* v. *United States,* 280 U. S. 453, 465, 466. If a taxpayer agrees to an extension of the statute of limitations, his action constitutes a voluntary, unilateral waiver of a defense; and although the Commissioner signs the form to acknowledge the waiver, the Commissioner's signature does not and can not create any contractual obligation on his part. *Stange* v. *United States,* 282 U. S. 270, 276; *Aiken* v. *Burnet,* 282 U. S. 277, 281; *Florsheim Bros. Co.* v. *United States, supra.* Since the Commissioner has no authority to enter into a contract of the type alleged here, his subordinates clearly lack the power to enter into such a contract on his behalf.

3. Contrary to taxpayer's assertions (Pet. 9–10), the District Court recognized the presumptive validity of action taken by a Government officer in his official capacity (R. 16, 56, 59–60), but, on the facts of this case, the court concluded that the presumption was not controlling. After weighing the evidence, the court found as a fact that the subordinate official who signed the Commissioner's name to the alleged contracts had neither express nor implied authorization from the Commissioner to do so. (R. 15, 16, 17.) [3] Even if the

[3] For the testimony sustaining the conclusion reached by the District Court, see the transcript of proceedings in the District Court, pp. 165–166, 171, 189–190, 192–193, 198–200, 205–206, 209–210, 211–212, 248, 259, 301, 320–324.

Commissioner himself were authorized to enter into such a contract, it appears that he did not delegate that authority here, and the decision below can therefore be sustained on a factual ground which is distinct from the disputed questions of law.

4. There is no basis whatever for taxpayer's suggestion (Pet. 2, 10–11) that repudiation of the purported contracts constitutes a denial of due process. One who enters into an agreement with a Government official is deemed to know of limitations on the official's authority and cannot later complain if the official actually lacked authority to enter into such an agreement. *Federal Corp. Ins. Corp.* v. *Merrill,* 332 U. S. 380, 384; *Sutton* v. *United States,* 256 U. S. 575, 579–580. Moreover, this taxpayer has not been prejudiced in any way by the Government's refusal to carry out the terms of the purported contracts. The only consideration taxpayer furnished for the purported contracts was his agreement to waive the statute of limitations on assessment of his taxes for the years 1950 and 1952, but the Government is not relying on these waivers to support the timeliness of assessments for those years. (R. 16, 36.) Accordingly, taxpayer does not assert and could not show that he has acted to his detriment in relying on the purported contracts. If he has defenses on the basis of the statute of limitations or on other grounds, he has his opportunity to present those defenses in the proceedings now pending in the Tax Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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